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JUN - 8 2000

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REDACTED - FOR PUBLIC INSPECTION

June 8, 2000

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth Street, SW, Room TWB-204
Washington, DC 20554

Re: Written Ex Parte - CC Docket 00-65, Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region InterLATA Services in Texas

Dear Ms. Salas:

On Thursday, June 8, 2000, I provided the attached ex parte comments regarding the above-referenced proceeding to members of the FCC staff listed as receiving a copy of this Notice.

This material is confidential information subject to the Protective Order adopted by the Commission in the above-referenced proceeding and is being filed under separate cover. Those parties who would like to make arrangements to view this confidential information pursuant to the terms of the Protective Order entered in this proceeding should contact Michael Hunseder, Sidley & Austin, 1722 Eye Street, N.W., Washington, D.C. 20006, 202-736-8236.

Two copies of this Notice are being submitted to the Secretary of the FCC in accordance with Section 1.1206(b)(1) of the Commission's rules.

Sincerely,

A handwritten signature in dark ink, appearing to read "F. Simone".

ATTACHMENT
cc: M. Carey
W. Dever

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Ex Parte Submission

Magalie Roman Salas, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Application by SBC for Authorization To Provide In-Region, InterLATA
Services in Texas, CC Docket No. 00-65

Dear Ms. Salas:

This letter is submitted at the request of Commission staff on behalf of AT&T, and responds to certain assertions made by SBC in its Supplemental Reply materials – assertions which introduce new evidence or arguments in violation of the Commission's complete-when-filed rule, and which so distort the record that they cannot be allowed to stand unrefuted. The Commission should ignore SBC's procedurally and substantively improper material, or in the alternative should allow commenters such as AT&T the opportunity to put on the record their responses to that SBC material.

In this letter we will address, *inter alia*, SBC's new arguments that its FDT provisioning performance should be ignored in this Commission's review of its application, and its improper submission of new data on outages and timeliness, indicating the ways in which it makes some of the same errors as previously noted, as well as some new or heretofore undiscovered errors. We also respond to SBC's account of the special charges it has announced as a disincentive to the use CHC for routine orders, the first such account of these charges SBC has put on the record in this extended proceeding, and an account at great variance from earlier descriptions of the charges put on the record by AT&T, and to which SBC never previously objected.

I. Outages

SBC continues to insist on its "refinements" to even the jointly agreed to data, and presents new, unilateral data on Performance Measures 114 and 114.1 for March and April --

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months which were not part of its application and should not be made part of the record. Should the Commission believe otherwise, however, AT&T requests that it consider these comments. As discussed below, SBC again fails to acknowledge those outages which are reflected in PM 114 and 114.1, as well as outages captured as part of its data on trouble reports, including its newly-calculated I-7 data.

A. Exclusion of FDT

SBC makes new claims and offers new “evidence” in its effort to avoid a critical assessment of its FDT process.¹ SBC claims that FDT is too new a process to warrant regulatory scrutiny, ignoring the fact that it has long touted FDT as “the way to go” for commercial volumes of orders. SBC also offers a new and inconsistent account of the charges associated with coordination, confusing an assessment of the financial incentives it has created for the use of FDT. Each of these will be discussed below.

In addition, SBC’s Supplemental Reply materials attempt to offer an alternative to ignoring FDT—inflating the numbers for FDT by reverting to the now thoroughly abandoned 2 hour standard for hot cuts, including FDT cutovers. See Noland/Dysart Supp. Reply Aff., ¶20. Allowing a 2 hour interval for all cuts of less than 24 lines was never reasonable or commercially viable,² and not even SBC has lately attempted to defend that standard in light of the minimally acceptable standards established in the BA-NY Order. A 2 hour interval, which was created by the TPUC and SBC (without CLEC input) as an interim metric for CHC orders—not for FDT, is particularly inappropriate and unnecessary for FDT orders. FDT requires less coordination, so there are fewer steps and fewer time consuming hand-offs of the order than in the CHC process. In addition, it is vital to note that an end-user is out of service *for the entire period* of an FDT cutover, unlike in the CHC process.³

1. SBC Misrepresents The Novelty of FDT

¹ See Noland/Dysart Supp. Reply Aff., ¶¶26, 30 (discussing March and April FDT results).

² See the discussion at DeYoung/Van de Water Supp. Decl., ¶¶ 60; AT&T Supp. Comments at 35-36; DeYoung/Van de Water Supp. Reply Decl., ¶96 n.38.

³ In the course of its objection to the 30 minute outage period the joint SBC/AT&T PPIG agreed was reasonable for FDT, SBC rather confusingly states: “the PPIG data unfairly penalizes SWBT by considering any FDT cut that takes more than 30 minutes to provision as an ‘outage.’ In most instances, SWBT does not believe any such outage occurred.” Noland/Dysart Supp. Reply Aff., ¶20. Of course, outages result from FDT cuts that do not occur at the frame due time, and the PPIG uncovered numerous outages that took more than 30 minutes; perhaps what SBC is referring to are FDT cuts which lasted more than 30 minutes but less than 60, for which SBC does not believe it should be penalized.

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SBC's claims notwithstanding, there is no reason to treat FDT as a recent innovation meriting special exemption from regulatory oversight. As SBC's new materials demonstrate (see Noland/Dysart Supp. Reply Aff., ¶51), the operational differences between the FDT and CHC processes revolve largely around phone calls to coordinate technicians' routines (CHC includes the calls, while FDT does not).⁴ As AT&T has noted previously, hot cuts by Bell Atlantic—New York proceeded with a degree of coordination more like that in SBC's FDT process than its CHC process. DeYoung/Van de Water Supp. Reply Decl., ¶31 and Meek Aff., ¶55-58 (Attachment 9 thereto).

Contrary to SBC's representations in its Supplemental Reply materials, Accessible Letter CLEC 99-092 does not mark the beginning of use of the FDT process, and it did not "notif[y] the CLECs of the availability of the FDT ordering process" (*id.*; see also ¶25). In that Accessible Letter, SBC was merely "clarifying the ordering options for [UNE-Loops] which are being migrated from the SBC retail service to the CLEC Network with or without Number Portability." Accessible Letter CLEC 99-092 (Attachment 1 hereto). The Noland/Dysart Affidavit also implies that there is a passage in the Conway Affidavit that supports the notion that FDT is new (¶25), but a look at that reference (Conway Aff., ¶¶85-89) shows that Ms. Conway was not saying that FDT was new, only that there was a new documented process flow for both CHC and FDT ordering. Indeed, that affidavit and all other SBC materials simply present simultaneously the two processes for ordering. "Flow-through" ordering has long been a standard procedure, and the current form of FDT is now more than a year old.⁵ See FDT Timeline (Attachment 2 hereto).

SBC's Supplemental Reply materials incorrectly suggest that the fact that CLECs are using FDT is somehow proof that the process is working fine, despite its claim that FDT should not be subject to regulatory review. SBC Reply Comments, p.38. In reality, CLECs have been using both CHC and FDT, and have been finding problems with both processes. See e.g., DeYoung/Van de Water Supp. Reply Decl., ¶¶70-71. SBC itself has consistently encouraged CLECs to use the FDT process, and an uncoordinated process is necessary if CLECs are to be able to ramp up to commercial volumes. The fact that CLECs are using FDT certainly cannot be a reason to exclude it from consideration by the FCC – quite the contrary.

⁴ In addition, there is a key OSS-related difference between the two processes: FDT orders are designed to automatically flow-through SBC's OSS, while CHC orders are not, making FDT more commercially viable. As we have previously discussed, this is another reason why FDT cannot be ignored. See DeYoung UNE-Loop Decl., ¶¶32, 41-48.

⁵ From the period when INP was being used rather than permanent number portability, SBC always offered a "flow-through" process for smaller orders and a coordinated process for larger orders. See Kramer Aff., ¶3 (contrasting "flow-through" orders for which the CLEC designated an "FDT" with "coordinated" cutovers) (Attachment 3 hereto); Transcript, TPUC August 5, 1998 Workshop, pp.136:25-138:25) (Attachment 4 hereto) (same).

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SBC now concedes that that it “has in the past encouraged the use of FDT for those orders of 19 or less where non-coordinated cuts might suit the CLEC’s business plans.” Noland/Dysart Supp. Reply Aff., ¶ 54. SBC’s encouragement to use FDT has partly come in response to CLEC complaints about, and SBC’s acknowledgement of, the capacity constraints of the CHC process. See DeYoung UNE-Loop Decl., ¶45; DeYoung/Van de Water Supp. Reply Aff., ¶71. (See further discussion below.)

2. SBC Coordination Charges Function As Disincentive To Use CHC

In addition to the capacity problems that constrain the CHC process, the coordination charges associated with CHC orders function as a disincentive to the use of the CHC process. In previous submissions, AT&T explained that SBC created the substantial cost disincentive for CLECs to use CHC by establishing a surcharge of \$115 per line for CHC orders of fewer than 20 lines at a single customer address that are provisioned during business hours. See DeYoung/Van de Water Supp. Reply Decl., 27-29 and FCC Access Tariff No. 73, §13.2—Additional Labor (Attachment 5 hereto) and Accessible Letter CLEC 98-074 (Attachment 6 hereto); see also DeYoung UNE-Loop Decl., 44 n. 27. Although SBC has not yet billed CLECs for these charges in Texas, its affiliate consistently has done so in California, and SBC clearly intends to do the same in Texas. See DeYoung/Van de Water Supp. Reply Decl. ¶ 27.

SBC’s Supplemental Reply materials now confirms the longstanding existence of this significant cost disincentive. Specifically, SBC confirms that these “CHC charges apply when a CLEC requests coordination on a conversion of 19 or fewer lines or whenever a CHC is requested outside normal business hours.” Noland/Dysart Supp. Reply Aff. ¶ 48. SBC confirms, moreover, that it alerted CLECs to this “‘threshold’ for application” of these CHC charges in an accessible letter “dated September 11, 1998.” Id. SBC confirmed in that Accessible Letter, moreover, that hot cut orders for fewer than 20 lines “do not qualify” for CHC processing. Accessible Letter 98-074. It is thus undisputed that, both today and for more than a year and a half, SBC has had in place a cost structure designed to enforce SBC’s view that CLECs should not use CHC for routine hot cut orders by imposing significant penalties for the use of CHC for hot cut orders that do not “qualify” for a coordinated cutover.

This penalty structure confirms that FDT is the primary process that SBC holds out for CLECs to use. Moreover, by stating unequivocally in the present tense that these “CHC charges apply” to hot cut orders (Noland/Dysart Supp. Reply Aff., ¶ 48), the Supplemental Reply affidavit makes clear SBC’s continuing intention to impose them. Thus, SBC’s reply confirms that SBC, in urging regulators to ignore its FDT hot cut performance, is effectively urging regulators to ignore the principal means for processing hot cut orders that it long ago set forth for CLECs to use.

SBC disputes AT&T’s statement that the size of the penalty is \$115 per line. SBC now claims, *for the first time*, that the penalty is \$21.44 per quarter hour increment and

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(evidently) per line.⁶ For purposes of this analysis, the difference is immaterial. SBC's new figure is still a very significant charge from a competitive perspective. For example, at the time its application was approved and to this day, Bell Atlantic-New York charges only a \$4.39 non-recurring charge for loop cutovers under its provisioning process that SBC claims is analogous to its CHC process. Moreover, plainly, if other CLECs used FDT in Texas and AT&T did not, AT&T would face a considerable cost disadvantage. See DeYoung/Van de Water Supp. Reply, 28. In addition, the fee still gives SBC a reward for every cut that lasts up to the 120 minute limit at which the penalties can be imposed. Id. at 28 n.17.

Furthermore, SBC has not shown that either the \$115 nor the \$21.44/quarter hour charge has been found to be cost-based. SBC claims only that "[t]hese rates were arbitrated by the TPUC as part of the AT&T 'Mega-Arbitration' proceeding, and are based on the work required to complete a CHC." Noland/Dysart Supp. Reply Aff. ¶ 50. However, the charges SBC points to are time and materials costs "associated with dispatching a technician to repair equipment", and are clearly inappropriate as charges for CHC, which involves no such dispatch. See 1997 Texas Time & Materials Cost Study, p.2 (SBC 271 Application, Vol. 5 at Tab 33) (Attachment 7 hereto). SBC has not pointed to any evidence in the record that SBC identified either of these charges as applying to CHC cutovers at the time of the arbitration, nor has it pointed to any forward-looking cost study that was submitted into the record to support these charges – for CHC cutovers – as being cost-based under the Act. Noland/Dysart Supp. Reply Aff. ¶ 50. Indeed, the development of the charge indicates that it was not cost-justified, because SBC did not even attempt to justify a time and material charge of \$21.44 per quarter hour. Instead, SBC originally proposed a charge of \$45.27 for the first half hour and \$21.54 for each half hour thereafter. See 1997 Texas Time & Materials Cost Study, p.4. The TPUC reduced the

⁶ Although AT&T has previously asked SBC to confirm the size of the CHC penalty, SBC's latest position is inconsistent with SBC's prior answers and its own documentation. The CLEC Accessible Letter (No 98-074) that Noland/Dysart reference at paragraph 48 of their reply affidavit refers to FCC Tariff No. 73, SBC's interstate Access Tariff, Section 7 (Special Access). Because Section 7 is 215 pages long and because it is an access tariff with no reference to CHC charges (or indeed to CHC or any local exchange service provisioning), AT&T long ago sought clarification regarding these charges from SBC. AT&T ultimately was told by Mr. Robert Royer of SBC that the tariff reference was wrong, and that the correct reference was to Section 13.2.3 of the Access Tariff, which applies to "stand by" time for SBC personnel during installation.

That statement is consistent with the current version of the CLEC Handbook, which (at Section 3.2.2 of the LNP provisions) states that the applicable charges are contained in Section 13 of Tariff 73. In contrast, SBC's suggestion that the appropriate charge is \$21.44 per ¼ hour (during normal business hours) finds no support in any of SBC's documentation that SBC has previously cited. Moreover, prior to submission of the reply affidavit, SBC has never suggested that the charge had changed or that its documentation was wrong and the correct charge is actually contained in the T2A.

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charge for the first half hour to \$21.44 per quarter hour, but then neglected to reduce the charge for additional quarter hours. Thus, SBC's original claim argued they were entitled to \$66.81 for an hour cutover, but the TPUC's revision would give them \$85.76, an amount SBC never tried to justify. Finally, the charges could not, even in theory, be cost-based, because SBC does not charge them when the CHC process is used for orders that "qualify" for CHC provisioning – i.e., orders for 20 or more loops; these charges thus function solely as penalties designed to discourage use of CHC. Thus, the CHC process on which SBC seeks exclusively to rely for obtaining 271 approval is one on which SBC has established charges that have never been shown to be and are not cost-based – which is yet another reason not to ignore SBC's FDT performance. Stated another way, SBC cannot establish compliance with the competitive checklist based solely on a process for which the associated charges are not, and have never been found to be, cost-based.

3. Capacity Constraints on CHC Provisioning

The charges SBC established to penalize the use of CHC for routine orders clearly reflect SBC's concerns about the capacity limits of the resource-intensive CHC process. As AT&T has previously noted (DeYoung/Van de Water Supp. Reply Decl., ¶25), SBC has acknowledged that "with increasing demands for Coordinated Hot Cuts (CHC), it is becoming difficult to meet the requested FDT" and suggested that AT&T employ the FDT process instead.⁷ SBC has noted that "the coordinated hot cut process is very manual on both sides", and proposed that CLECs use the FDT process since it "is a much less resource intensive process [and] is one way that we can mitigate this congestion that is involved in the coordinated hot cut issue because it doesn't require the manual hand holding that the coordinated hot cut does."⁸ SBC has acknowledged that, were AT&T to double the current low CHC order volume, not only may SBC not be able to provision at the desired frame due time, it may not even be able to provision on the requested cut date because of capacity constraints affecting SBC's CHC procedure. SBC, however, has confidently predicted to AT&T that "if you go to frame due time it alleviates" the CHC capacity constraints.⁹

SBC's warnings that its CHC provisioning is capacity constrained were manifestly accurate. SBC has once again been inappropriately issuing improper rejections of AT&T's CHC orders when unable to confirm the specific hot cut due date and time AT&T

⁷ See Email dated September 20, 1999 from SBC's Mr. Royer to Ms. DeYoung (see DeYoung UNE-Loop Decl., Attachment 4).

⁸ Testimony of SBC's Mr. Royer, Nov. 2, 1999 TPUC Hearing Tr. at 171 [SBC App. C at Tab 1968].

⁹ Statement of SBC's Tom Hughes, TPUC Docket No. 21000, Sept. 21, 1999 Workshop ("Sept. 21 Dispute Workshop"), Tr. at 52 (see DeYoung UNE-Loop Decl., Attachment 5).

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requested, despite resolution of this issue in July 1999. See DeYoung/Van de Water Supp. Reply Decl., ¶71. When AT&T complained, SBC admitted that it had failed to meet its previous commitment not to issue such rejections, but attempted to excuse itself by noting “we all understand that a limitless number [of CHC orders] cannot be handled on any given date and time.” Email from Robert Bannecker to Sarah DeYoung, 5/26/00 (Attachment 8 hereto). While SBC’s resources are not expected to be “limitless,” it is disturbing that SBC must concede that it is unable to properly provision the current low order volumes. For example, of AT&T’s XXXX CHC orders for the month of May, XXXX were given erroneous rejections for an invalid due date, and another XXXX were not given the due date requested, even though the requested date met the standard three-day installation interval. SBC’s inability to meet a properly requested due date on XXXX out of XXXX orders (27.1 percent) demonstrates the severe capacity constraints that make CHC unworkable for commercial order volumes.

These capacity constraints are not clearly reflected in the Performance Measure reports for measures 55 and 56, which capture the average installation interval, because SBC does not report on those measures for CLECs who do not request the standard installation interval (three-days after the order was submitted). Statewide, it is estimated that fewer than 54 percent of orders in February—April qualify for PM 55.2 (loops with LNP) by requesting the standard interval,¹⁰ and in the commercially significant Dallas and Houston areas the rates are only about 32 percent and 18 percent respectively.¹¹ Because so many CLECs do not request the standard interval, SBC’s capacity to provision CHC cutovers has not been reflected by the Performance Measures designed to capture indications of capacity constraints.

B. Exclusion of Outages from Premature Disconnects

SBC’s Supplemental Reply materials incorrectly state that the PPIG “double counts” outages resulting from SBC’s premature disconnects (Noland/Dysart Supp. Reply Aff., ¶19). This is incorrect. Each outage resulting from a premature disconnect was counted as an

¹⁰ To perform this analysis, AT&T calculated the number of orders reported under PM 55.2 for February—April, which is reported at the order level, as a percentage of the total number of orders for those months. To obtain total order volumes for the industry during those months, AT&T converted loop totals provided in PM 114 and 115 to order totals by dividing the loop volumes by the SBC-reported average number of lines per order. Dividing the reported cutovers per PMs 114 and 115 by the 4.6 average number of lines per order reported by SBC yields 2487 orders, of which 1341, or 53.9 percent, qualified for PM 55.2. This calculation probably overstates the percentage of orders which qualify for PM 55.2, given that order outside of Dallas and Houston appear to have much lower numbers of lines per order.

¹¹ Dividing the reported cutovers per PMs 114 and 115 by the 4.6 average number of lines per order reported by SBC yields 900 orders for Dallas, of which 284, or 31.5 percent, qualified for PM 55.2, and 1086 orders for Houston, of which 200, or 18 percent, qualified for PM 55.2.

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outage only once; what SBC really wants is for these outages not to be counted as outages at all.¹² See DeYoung/Van de Water Supp. Reply Decl., ¶¶43-47.

The PPIG mirrored the BA-NY Order in counting outages caused by premature disconnects. See DeYoung/Van de Water Supp. Reply Decl., ¶44 and Att. 5 (Rubino Aff. ¶ 13 & Exs. 5, 6 (showing "early cuts" were included as outages in the NYPSC staff reconciliation); see also BA-NY Order ¶ 301 n.959 ("Such an occurrence [an early cut] would be scored as a 'miss' under the Percent On-Time Hot Cut Performance measure *and would also result in an outage*") (emphasis added). SBC's new materials, like its "refinement" of the PPIG outage data, argues that outages resulting from premature disconnects should be subtracted from the agreed to PPIG data, and then never accounts for them as outages at all. See DeYoung/Van de Water Supp. Reply Decl., ¶44. This partial and incomplete measure of outages renders invalid their data and arguments for recent months just as surely as it did for the months which are the subject of SBC's application.

C. Exclusion of Outages Captured as Trouble Reports

SBC's new materials also do not account for outages which appear in I-7 trouble reports, despite the fact that these too were counted as outages in the BA-NY Order. See DeYoung/Van de Water Supp. Reply Decl., ¶¶86-89. AT&T has identified the outages which were reported as troubles within seven days of provisioning, and found that there were at least XXXX orders with such outages in December,¹³ XXXX in January, and XXXX in February. See I-7 Report Outages (Attachment 9 hereto).¹⁴ AT&T has also noted that there were XXXX such outages in March. Id.

¹² SBC itself describes premature disconnects as outages (Noland/Dysart Supp. Reply Aff., ¶36; see also citations in DeYoung/Van de Water Supp. Reply Decl., ¶42 (discussing the TPUC)), making their argument that they should not be taken account of in measuring SBC's outage rate all the more peculiar.

¹³ AT&T previously reported that there at least XXXX such outages in December, based on the number of orders that the PPIG had discussed during the reconciliation process on December orders. See DeYoung/Van de Water Supp. Reply Decl., ¶90 n.35. As noted therein, the PPIG did not include these troubles in the reconciled outage data, because the PPIG did not count as outages those provisioning problems that were also captured as trouble reports. See id., ¶90. The XXXX orders reported above (based on SBC's PM 59 raw data) may still be understated; AT&T has found that XXXX orders, which were excluded from the PPIG outage data because SBC said they were on the I-30 report, were not, in fact, in the raw data for PM 59. AT&T has sought, but not yet received, clarification from SBC on these XXXX orders. See id., ¶90, n.35.

¹⁴ As noted on the Attachment, in December and February there were XXXX orders that had two trouble reports called in on them, and XXXX each in January and March.

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In the BA-NY Order, the Commission noted that under the metrics there, “‘on-time’ hot cuts that result in outages” were included in the “Percent Installation Troubles” measure. BA-NY Order, ¶301 n. 959. The I-7 rate, which was a component of the overall BA-NY outage rate (DeYoung/Van de Water Supp. Reply Decl., ¶¶86-90), was used as a check on the overall outage rate; because the I-7 rate was low, the Commission was more confident that the low overall outage rate was likely to be correct. BA-NY Order, ¶¶300-03. Here, the I-7 rate was not a component of the overall 16.7 percent PPIG outage rate, and must be added to that rate to get a true overall outage rate.¹⁵

D. SBC Excludes Types of Outages But Does Not Adjust the BA-NY Metric

Furthermore, while its “refinements” and “adjustments” would lead to exclusion of outages resulting from premature disconnects and those reflected in I-7 data, both of which would have been included in the BA-NY Order measure of outages, SBC nevertheless wants to leave unadjusted the BA-NY Order fewer-than-5 percent standard. See Noland/Dysart Supp. Reply Aff., ¶¶21, 24. This is a dramatic, unexplained, and insupportable departure from the outage measure as defined in the BA-NY Order. See DeYoung/Van de Water Supp. Reply Decl., ¶44.

E. Exclusion of RCMAC/SOAC Problem

SBC says in its Supplemental Reply materials that it should be “held accountable” for the SOAC problem, but at the same time does not want the problem to be taken into account when measuring outages. See Noland/Dysart Supp. Reply Aff., ¶23. SBC’s approach is to treat the SOAC-affected orders as if they were perfectly provisioned, which is an obvious fiction the Commission should not entertain.

Furthermore, to truly disregard the SOAC error would require not just taking those orders out of the numerator, as SBC’s materials suggest, but also taking them out of the denominator as well. There were XXXX AT&T outages, XXXX of which were SOAC-related outages, and XXXX total AT&T orders for December through January. See DeYoung/Van de Water Supp. Decl., Att.C (Royer/Van de Water Joint Affidavit). Setting these aside leaves

¹⁵ Thus, SBC’s self-reported I-7 rate of 1.9 percent should give it little comfort. A 1.9 percent outage rate on I-7 data alone leaves little margin for error on all other types of outages if SBC is to be able to meet the BA-NY Order standard of fewer-than-5-percent outages. As discussed below, SBC itself also reports that outages resulting from premature cutovers averaged 3.6 percent for February through April. Noland/Dysart Supp. Reply Aff., ¶24. If this performance were typical, SBC would have a 5.5 percent outage rate before any outages from defective cuts, equipment and translation problems, and so forth were accounted for. Such problems account for 25 percent or more of PPIG-measured outages. See DeYoung/Van de Water Supp. Decl., Att. F.

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XXXX non-SOAC outages on the 450 non-SOAC orders, meaning the outage rate without taking account of the SOAC error would be 12.4 percent. Such an outage rate far exceeds that found minimally acceptable by the Commission in the BA-NY Order.

F. SBC "Refinements" and Adjustments Disregard Competitively Significant, Customer Affecting Outages

The Commission has said it is "especially concerned with hot cut performance" given the prospects of an unexpected loss of service to the end user and the resulting competitive burden on CLECs. See BA-NY Order, ¶309. SBC's efforts to disregard those outage categories which would reveal that its outage rate is far above the rate found minimally acceptable in the BA-NY Order ignores the fact that every outage, regardless of its label or Performance Measure category, represents a real customer with an actual loss of service. Small and medium sized business customer cannot afford such loss of service, and react with understandable frustration and anger when their business decision to change their telephone service provider leaves them disadvantaged and penalized by a loss of communications with their clientele. This frustration and anger is painfully evident in AT&T's experience, as reflected in customer comments and complaints. See Declaration of Robert Dapkiewicz (AT&T); DeYoung UNE-Loop Decl., ¶¶99-102 and Atts. 14, 15 and 16.

Whether an outage results from a wiring defect, a premature cut, or from any other root cause, the result is the same: the customer loses business and must waste valuable time seeking to have the problem resolved. In addition, whether the customer stays with AT&T or in frustration returns to SBC, AT&T's reputation as a provider of high quality service is unnecessarily and unfairly sullied by SBC's improper provisioning. Given that all outages, regardless of the label, have these competitive effects on the end-user's business and the CLEC's reputation, it is only reasonable that they all be accounted for when considering a BOC's 271 application.

II. Timeliness

SBC's new data and arguments also distort the record on premature and prolonged cutovers. Indeed, the latest information has revealed that the PM 114.1 and 114 data in the record for the December through February period subject to SBC's application ought to once again be restated. Far from demonstrating compliance with the Commission's requirement of timely provisioning, the latest information shows SBC's data continues to be flawed and incapable of supporting its application.

A. PM 114.1—Cutover Interval

There are two ways in which SBC's reported data fails to account for SBC errors that prolong the period of the customer's loss of service during a CHC cutover. In each circumstance, the delay not captured by SBC may be competitively significant, i.e. it may extend

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the duration of the cutover so long as to exceed the permitted interval. The first, which AT&T has previously protested,¹⁶ occurs because PM 114.1 does not capture the time period during CHC orders between when the technician notifies the LOC that the cutover is complete and when the LOC notifies the CLEC.

The second, revealed for the first time by SBC at a May 24, 2000 TPUC working session on performance measures, occurs when SBC fails to activate the NPAC or the LNP update is begun but not completed within 60 minutes. SBC has been recording and capturing these delays under PM 100 (average time out of service for LNP conversions) and PM 101 (percentage of time that the customer was out of service for more than 60 minutes), two LNP-related measures, and has *not* captured such delays under PM 114.1. Thus, while PM 114.1 purports to capture the duration of a hot cut outage, it understates the degree of SBC's poor performance by failing to account for each of these integral elements of an LNP-with-loop cutover.

1. The Notification Gap

As the Department of Justice noted in its Evaluation of SBC's application, Performance Measure 114.1 does not include the time it took for SBC to notify the CLEC of the completion of a hot cut, though "it is *this* notification that alerts the CLEC to port the number and test the line – necessary steps for the end-user to receive fully functional telephone service." DOJ Evaluation, p.31-32 n.84 (emphasis in original). This "fail[ure] to measure a portion of the relevant CHC time period" means "SBC's data are not sufficient to show that SBC is completing its hot cuts with the same degree of timeliness as Bell Atlantic was in New York." DOJ March 20, 2000 Ex Parte, p.9. Thus, PM 114.1 is not a valid measure of the complete duration of a coordinated hot cut.

AT&T demonstrated in its Supplemental Reply materials that the notification gap was not a trivial problem. See DeYoung/Van de Water Supp. Reply Decl., ¶92 and Attachment 14. On 14.5 percent of the CHC orders AT&T submitted in December and February, a gap occurred that was significant enough to have changed the duration category for that order,¹⁷ with an average notification gap for these orders of 32.1 minutes in December and 20.1 minutes for February. Id. According to SBC, however, the average gap was only 6 minutes in December

¹⁶ DeYoung/Van de Water Supplemental Joint Declaration, ¶¶53-54; DeYoung/Van de Water Supplemental Reply Declaration, ¶92.

¹⁷ SBC's raw data identified the following duration categories: <30 minutes, >30 minutes and < 60 minutes, >60 minutes and <120 minutes, and over 120 minutes.

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and 10 minutes in February.¹⁸ See Noland/Dysart Aff., ¶13 and Att. A. This difference does not reflect any fundamental dispute about the actual length of the notification gaps that SBC failed to capture.¹⁹ Rather, the difference reflects the different approach to calculating the average.

In order to calculate the average gap duration, AT&T, using the reconciled data on PM 114.1 for December through February, summed the number of gap minutes associated with the orders that experienced gaps and divided them by the number of orders in which there was a gap. As noted above, of the XXXX CHC orders that were submitted during this period, a competitively significant gap occurred on XXXX, or 14.5 percent, of them.

SBC took a different approach. While it agrees the numerator should be the sum of the gap minutes associated with those XXXX orders, it divides that numerator by *all* AT&T orders, rather than by the true denominator, the number of orders in the PM 114.1 data in which they identified gaps.²⁰

SBC's use of the whole base of AT&T CHC orders in the denominator is fundamentally flawed for several reasons. First, the reconciliation process did not capture all of the gaps in SBC's performance data for 114.1. Rather, AT&T only presented to SBC for reconciliation those orders for which AT&T's raw data and SBC's raw data showed a gap of such sufficient duration that it caused SBC's raw data to reflect the wrong duration category for the cut. For example, if SBC's raw data showed that a cut took 61 minutes to complete but AT&T's data showed that it took 119 minutes to complete, AT&T would not have sent that order to SBC for reconciliation because it did not change SBC's reporting category for that cut (i.e. >60 minutes but <120 minutes.) Thus, SBC's assumption in its calculation that the orders identified through reconciliation were the only ones for which there was a gap is wrong. Indeed, it is curious that SBC would make this assumption without first asking AT&T whether it had presented for reconciliation all orders on which there was a gap.

¹⁸ SBC also reports a gap of "0 minutes" in January, but they fail to note that in January AT&T was using the FDT process rather than the CHC process, and thus there were only a tiny number of CHC orders.

¹⁹ Although there is no reconciled data on the length of the gap per se, AT&T's understanding is that there are only minor differences, if any, in the parties' estimates of the length of the gap pertaining to the XXXX orders that AT&T and SBC have reconciled where the gap changed the reported performance interval.

²⁰ See Noland/Dysart Supp. Reply Aff., ¶ 13 (admitting that SBC calculated the gap by "dividing the sum of the 'gaps' identified during the course of the PM 114.1 reconciliation process by the total number of AT&T CHC orders for December, January and February").

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But more fundamentally, even if SBC had all of the data from which it could calculate an average gap across all orders, SBC's methodology misses the point. The important point is that there was a gap on 14.5% of AT&T's orders of such significance that it caused SBC to be recording the wrong duration category (see footnote 17 supra) for that order. As a result, SBC's PM 114.1 reporting overstates its on time performance. And from the customer's perspective, on this set of data, 14.5% of customers experienced a service interruption for longer than was necessary simply by virtue of SBC's failure to notify AT&T of the completion of its work.

2. Failure to Capture Delays In Switch Activation

As noted above, PM 114.1 also does not reflect any delays SBC causes though the failure to activate the NPAC on its side or when the LNP is begun but not completed within 60 minutes. SBC has included these instances only as part of its reported data on PM 100 (average time out of service for LNP conversions) and PM 101 (percentage of time that the customer was out of service for more than 60 minutes), which captures LNP data for all stand-alone LNP and LNP with loop orders. Any assessment of SBC's timeliness on hot cuts must therefore include not only the duration data captured in 114.1, but also data on those LNP with loop cutovers included in PM 100 and 101.

It is telling that, almost 5 months after it submitted its application to the FCC, SBC reveals that its data collection for Performance Measures 114.1 is flawed and its reported results inaccurate. The fact that an accurate and stable determination of the number and extent of unexpected service outages on and delayed provisioning of hot cuts, one of the most crucial issues in assessing the commercial viability of the hot cut process, still remains elusive and unknowable is a clear demonstration of SBC's failure to meet its burden of proving 271 compliance.

B. PM 114—Premature Cuts

1. Further Reconciliation

Further investigation resulting from a review of SBC's April 25 ex parte submission, as well as its submission of raw data underlying its revised outage calculations has revealed that the reconciliation between SBC and AT&T with respect to PM 114 in February did not reflect a full meeting of the minds between the companies. As a result, the data was reexamined and a further reconciliation was undertaken. A joint affidavit reflecting the results of that reconciliation has been filed with the TPUC. That joint affidavit, which reflects the work underlying the reconciliation and which the parties have completed, is attached to this letter. See Attachment 10 hereto.

The reconciliation showed that there were XXXX additional premature disconnects that had not been identified in the first reconciliation. Moreover, the reconciliation

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identified a number of orders that should have been included in SBC's "recalculation" of the outage percentage it reported in its April 25 ex parte, which, among other things, (inappropriately) excludes premature cuts from the outage rate. Thus, SBC's raw data inappropriately excludes the following PON numbers: for FDT: XXXX; for CHC: XXXX. While SBC claims that those orders were excluded because they were captured in PM 114, those orders had not, in fact, been so captured.

2. SBC's Arguments on Reply

SBC reports data from March and April and boasts of its three-month average from February to April (*see* Noland/Dysart Supp. Reply Aff., ¶24), as if those three months were its application period, rather than the December through February period for which there should have been complete evidence when the application was filed. This sort of "moving target" makes coherent deliberation impossible, and the April data is particularly inappropriate because that month was not put into consideration by any CLEC.

The new PM 114 data for the three months SBC points to is a mix of reconciled data for February and unreconciled data for subsequent months. SBC still has not established that such data can be relied on. Indeed, as noted above, while February data for PM 114 was fully reconciled, it turned out to be in need of further reconciliation when it was discovered that several orders had not been accounted for. The fact that restatements of reconciled data is still necessary at this late date belies SBC claims that the reconciliation has resulted in only minimal changes in performance measure results. SBC Reply Comments, p.32; Noland/Dysart Supp. Reply Aff., ¶33-35.

Interestingly, given the degree to which it has sought to preclude consideration of FDT provisioning, SBC's new materials obscure the problems with its CHC provisioning during the February to April by reporting only a combined FDT/CHC result for PM 114. *See* Noland/Dysart Supp. Reply Aff., ¶24. Though AT&T has not reconciled the data underlying SBC's calculations, it is apparent that the CHC results SBC reports – 13.44 percent for February, 0.75 percent for March, and 0.93 for April – would be greater than the 3.6 percent overall figure for CHC and FDT combined that SBC reports. Thus, SBC is not opposed to invoking FDT when it is advantageous to SBC to do so.

SBC's Supplemental Reply materials also confuse the BA-NY Order standards on premature cuts. The Noland/Dysart Supplemental Affidavit (¶24) claims that the February to April average for premature cuts is 3.6 percent, and then describes that as "well within the FCC's 5 percent standard for outages on conversion." Of course, the BA-NY Order standard of fewer-than-5 percent applies to more than just outages resulting from premature cuts. Indeed, a 3.6 percent outage rate owing to premature cuts alone would mean that compliance would require that fewer than 1.4 percent of orders suffered from all other outage types combined. SBC has clearly failed to meet that degree of provisioning.

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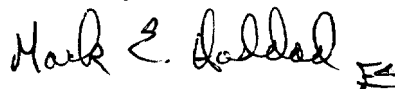
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III. SBC's Inconsistency on the Joint Data Reconciliation

Finally, SBC repeatedly mischaracterizes the nature and extent of the TPUC's involvement in fact-finding.²¹ As AT&T noted in the DeYoung/Van de Water Supplemental Reply Declaration, the TPUC never engaged in the type of independent inquiry undertaken by the New York Public Service Commission ("NYPSC") in the case of the Bell Atlantic application, nor did it resolve any factual disputes. See DeYoung Van de Water Supp. Reply Decl., ¶15 and Att. 5 (Affidavit of Margaret D. Rubino (NYPSC)). Rather than conduct a data reconciliation similar to that done by the NYPSC, the TPUC told the parties to do a reconciliation, and then reviewed and commented on the reconciled results. This Commission can review the reconciled results as easily as can the TPUC.

While trying to present the reconciliation as the work of the TPUC and thus meriting deference, SBC simultaneously disparages the reconciliation process, referring to the "guesswork that has characterized the PPIG process." Noland/Dysart Supp. Reply Aff., ¶45. Attacks on the data reconciliation process are unwarranted and unproductive. SBC participated fully in the PPIG reconciliation process, and submitted sworn testimony by its affiants who were involved in the process. Those affiants did not caveat the work they were engaged as involving any "guesswork;" rather, they simply attested to the agreed-upon outage rate after a review of that month's record. Indeed, SBC points to nothing in the record of either this proceeding or that relating to BA-NY that indicates that the reconciliation process in New York was more definitive than that engaged in by SBC and AT&T. As AT&T has shown, the reconciled PPIG data errs in being too generous to SBC, and if refinements get made, they should include the additional "trouble-report" outages included in the calculation of Bell Atlantic's outage rate but excluded by the PPIG.

Sincerely,



Mark E. Haddad

²¹ SBC says that the TPUC "specifically oversaw resolution of the concerns about SWBT's hot cut data" (Brief, p. 31), and makes reference to the "Texas PUC-supervised reconciliation" (p.31) and outage reconciliation "under Texas PUC supervision." (p.35). See also Noland/Dysart Supp. Reply Aff., 19 (the TPUC "followed a procedure similar to the one undertaken by the New York Commission and supervised a comprehensive, collaborative reconciliation").

Accessible



“Non-Coordinated UNE Loop Migrations” using Desired Frame Due Time (DFDT) on Local Service Request - Arkansas, Kansas, Missouri, Oklahoma, Texas ”

Date: July 15, 1999

Number: CLEC99-092

Contact: Southwestern Bell Account Manager

By this letter, Southwestern Bell is clarifying the ordering options for Unbundled Network Element (UNE) loops which are being migrated from the SWBT retail service to the CLEC Network with or without Number Portability.

“Non-Coordinated UNE Loop Migrations” are available when the migration is to occur during Normal Business Hours of 8:00 AM to 5:00 PM, Monday through Friday. Non-Coordinated UNE Loop Migrations are available where there are nineteen (19) or less UNE loops requested via a LSR to a single end user address. The desired migration time is entered in the DFDT (Desired Frame Due Time) field of the LSR in a 2-digit hour, 2-digit minute, AM/PM format. A valid entry is a specific time that falls either at the top of the hour or at half past the hour (e.g. 1000AM, 0430PM). The requested DFDT must be within normal business hours. The LSR field CHC (Coordinated Hot Cut) must be left blank. The CLEC is responsible for ensuring that its customer is notified that the migration will occur during the 60-minute interval beginning with the DFDT time, that the migration will cause a temporary loss of service, and that any calls in progress at the time of migration will be interrupted.

Where there are 20 or more loops at the end user address or the migration is requested outside of normal business hours, the LSR must be coordinated and should follow the guidelines for a Coordinated Hot Cut. For Coordinated Hot Cuts the LSR field CHC must be populated with a “Y” along with the DFDT (Desired Frame Due Time) in a 2-digit hour, 2-digit minute, AM/PM format specifying any time during the day. Valid entry is a specific time in half-hour intervals (e.g. 0900AM, 0530PM). Coordinated Hot Cuts are scheduled on a first-come, first-served basis, and must be coordinated in advance with the LSC via the LSR. If the CHC time is not available, the FOC is returned with the next available FDT. If the returned FDT is OK with the CLEC, no further LSR documentation is required. If the FDT returned is not satisfactory, the CLEC submits a Supplemental LSR with a new FDT for the CHC.

Southwestern Bell implemented this ordering option with the Local Service Ordering Requirements (LSOR) release of May 1, 1999.

**CLEC / SWBT
FDT Coordinated Migration**

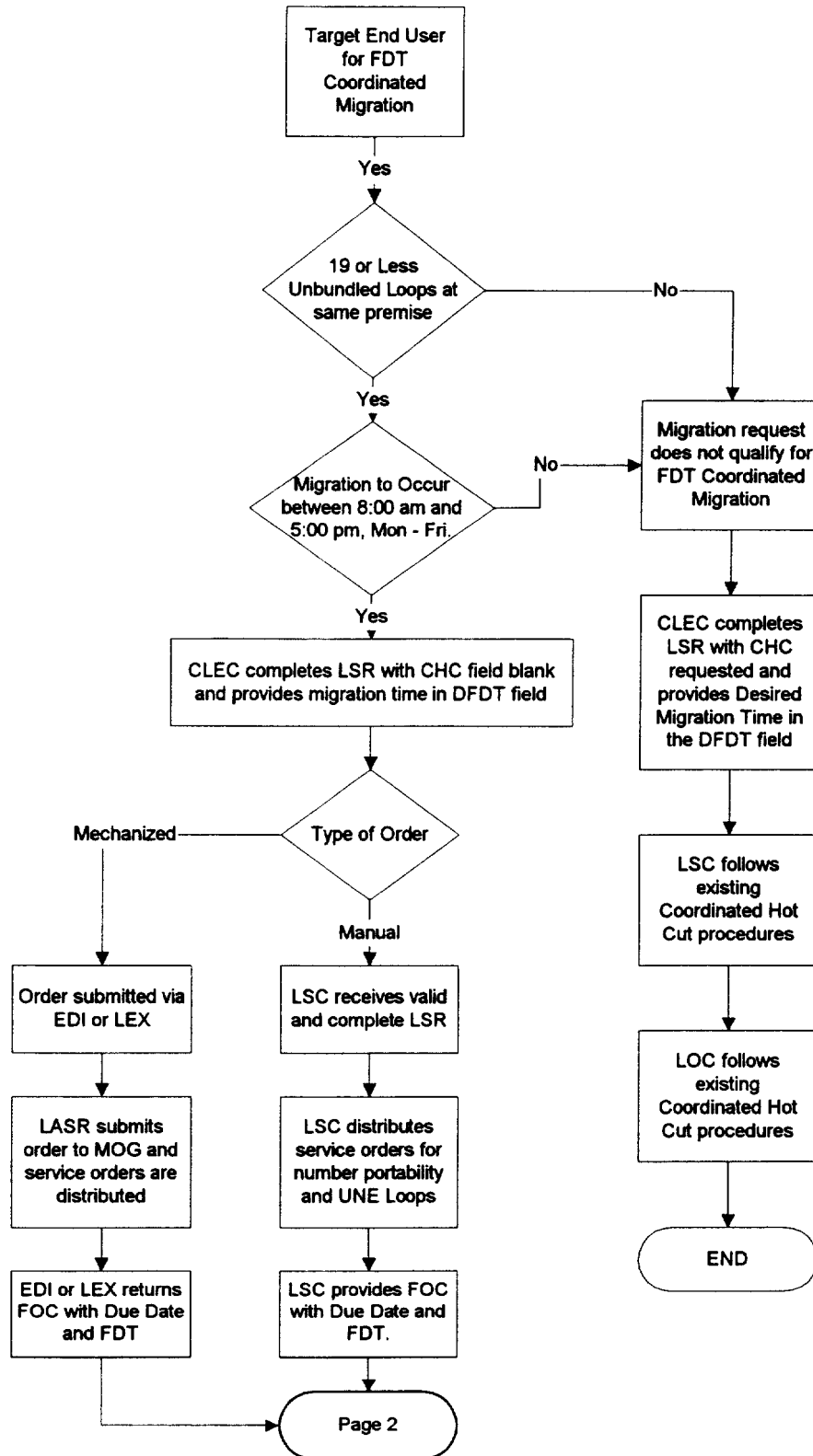
The following is a process flow chart for the process.

CLEC / SWBT
FDT Coordinated Migration

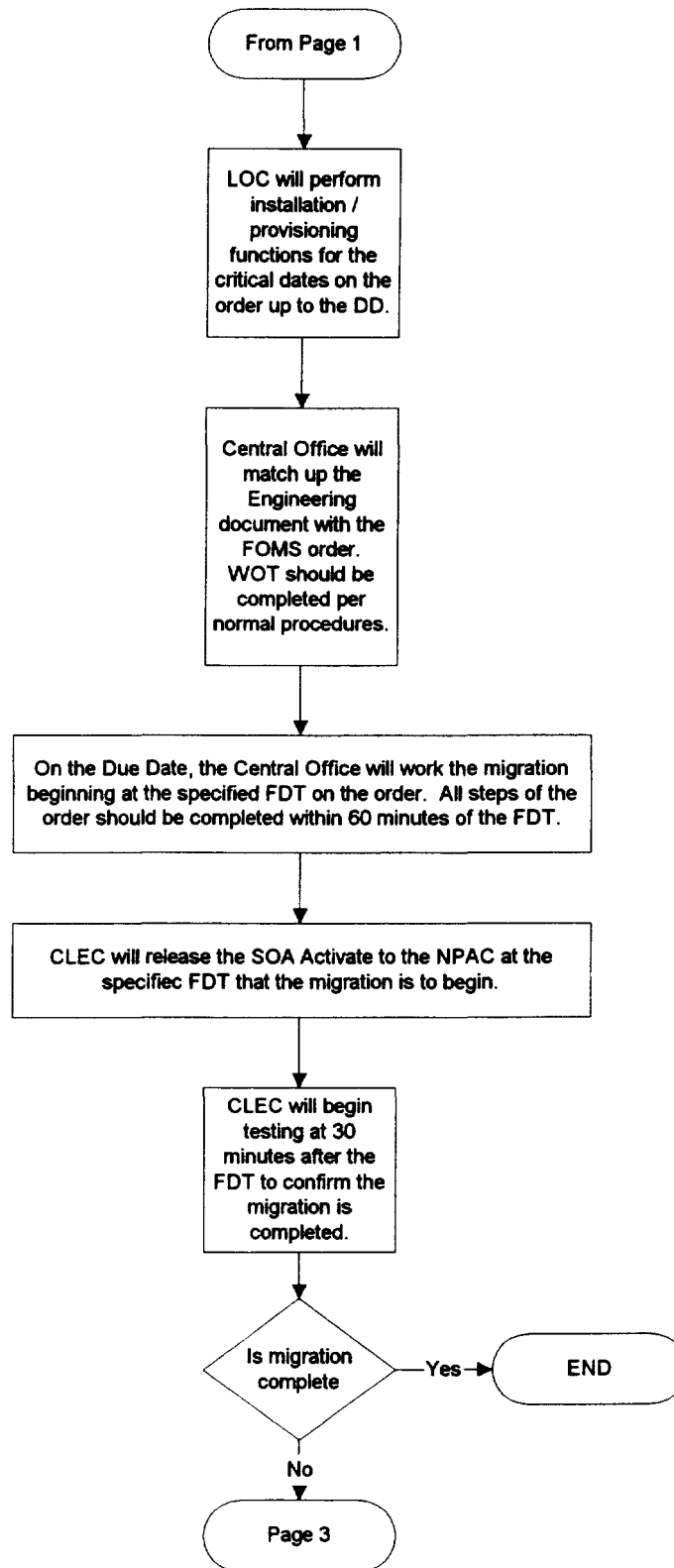
Glossary of Terms

Acronym	Definition
CHC	Coordinated Hot Cut, field on the LSR
CLEC	Competitive Local Exchange Carrier
DD	Due Date
DFDT	Desired Frame Due Time, field on the LSR
FDT	Frame Due Time, information on the SWBT service order
FOC	Firm Order Confirmation
FOMS	Frame Operations Management System
LASR	System that performs edits on a LSR and provided errors back to EDI or LEX interfaces
LEX	LSR Exchange
LOC	Local Operations Center – SWBT maintenance and installation center for CLECs.
LSC	Local Service Center – SWBT service order center for CLECs
LSMS	Local SMS
LSOR	Local Service Ordering Requirements, SWBT rules for completion of the LSR
LSR	Local Service Request
MLT	Mechanized Loop Test
MOG	Mechanized Order Generator
NPAC	Number Portability Administration Center
PON	Purchase Order Number
SOA	Service Order Activation
SS7	Signaling System 7
SWBT	Southwestern Bell Telephone
UNE	Unbundled Network Element
WOT	Wired and Office Tested

CLEC / SWBT
FDT Coordinated Migration



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FDT Coordinated Migration



**CLEC / SWBT
FDT Coordinated Migration**

